

REMARKS

Claims 1, 2 and 4-11 are pending. Claims 1 and 2 are allowed. Claim 4 is amended to more clearly set forth the nature of the homology relationship and to require that the encompassed molecules encode proteins which, like MDA-5 having SEQ ID NO:2, comprise a caspase recruitment domain and an RNA helicase domain (as supported by the specification at page 57 lines 21-25) and, which, when introduced into and expressed by an HO-1 melanoma cell, reduce the colony-forming ability of the cell (as supported by the specification at page 52, lines 6-8).

Claims 4-11 are rejected under the written description requirement of 35 U.S.C. §112. For reasons set forth below, the claims, particularly as amended herein, comply with the statute, so that the rejection should be withdrawn and all pending claims should be allowed to issue.

The Claims Comply With The Written Description Requirement

Claims 4-11 are rejected under 35 U.S.C. §112, first paragraph.

According to the Examiner the claimed nucleic acid molecule (i) encompasses a large genus of different size and structure that are not related to each other; (ii) the specification does not define the term “match”; (iii) recitation of “90 percent..... match the nucleotides of SEQ ID NO:1 or the complementary strand thereof” may be broadly interpreted to include any DNA sequence made up of the nucleotides ATCG; (iv) there is no written description support for all kinds of DNA sequences except the one that encodes Mda-5 polypeptide; (v) the limitation “90% homologous to SEQ ID NO:1” still encompasses a large genus of unrelated nucleic acids of different size and structure; and (vi) amended claim 4 does not contain a functional limitation

to the claimed genus of DNA sequences e.g. a functional domain necessary for Mda-5 function.

Thus according to the Examiner, since the specification allegedly fails to describe the claimed genus of nucleic acid by their complete structure or identifying characteristics in the previously amended claim 4, the written description requirement is not met and the rejection is maintained.

In response, Applicants amend claim 4, and assert that the subject matter encompassed by the amended claim is described in the specification in compliance with the legal standard. To address the Examiner's concern that the claim reads on molecules widely ranging in size and structure, claim 4 is amended to require that at least 90 percent of the nucleotides of SEQ ID NO:1 match the nucleotides of the claimed nucleotide. Applicants assert that the person skilled in the art would understand the meaning of the term "match" to mean that when the nucleic acid having SEQ ID NO:1 and the claimed nucleotide are aligned, nucleotides in the same sequence positions which are the same "match." Finally, claim 4 is amended to recite two structural limitations (the presence of a caspase recruitment domain and a RNA helicase domain) as well as a functional limitation (the ability to reduce colony forming ability of HO-1 melanoma cells (a widely available melanoma cell line)).

Applicants believe that these amendments address each of the Examiner's concerns, so that the rejection of claim 4 and its dependent claims should be removed.

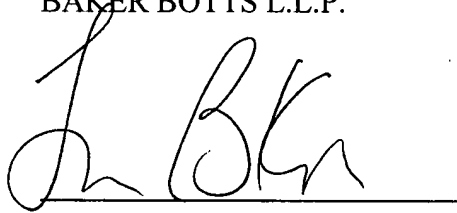
CONCLUSION

Based on the foregoing remarks and in light of the amendment to claim 4, Applicants submit that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

Applicants do not believe that any additional fee is required in connection with the submission of this document. However, should any fee be required, the Commissioner is hereby authorized to charge any fees to Deposit Account 02-4377. A copy of this sheet is enclosed.

Respectfully submitted,

BAKER BOTTS L.L.P.

A handwritten signature in black ink, appearing to read 'L B Kole', is written over a horizontal line.

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